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PRE-APPEAL BRIEF REQUEST FOR REVIEW

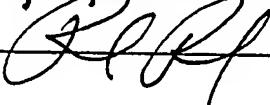
Docket Number (Optional)

LIM3

MAY 11 2007

PETITION ←

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on MAY 2, 2007Signature Typed or printed name RISTO A. RINNE, JR.

Application Number

10/826,830

Filed

April 16, 2004

First Named Inventor

EDMOND HENG LIM

Art Unit

3632

Examiner

WUSCIAK, ALFRED J.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record.Registration number 37,055

Signature

RISTO A. RINNE, JR.

Typed or printed name

415.457.6933

Telephone number

 attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

MAY 2, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of 2 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES DEPARTMENT OF COMMERCE
BEFORE THE PATENT AND TRADEMARK OFFICE

COPY

In re application of: Lim, Edmond Heng)
Serial No: 10/826,830) Group No.:3632
Filed: 04/16/2004) Examiner: Wujciak, Alfred J
For: Paper Plate Beverage Holder)



Commissioner of Patents and Trademarks

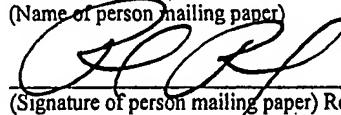
CERTIFICATE OF MAILING (37 CFR 1.8a)

I hereby certify that this paper, along with any paper referred to as being attached or enclosed, is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop PETITION, Commissioner for Patents, Alexandria, VA 22313-1450 on May 2, 2007.

Risto A. Rinne, Jr.

(Name of person mailing paper)

Date: May 2, 2007


(Signature of person mailing paper) Reg. 37,055

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Hon. Commissioner of Patents and Trademarks

Sir:

In response to the Office Action mailed March 8, 2007, please consider the following in appeal of the dismissal decision and the basis thereof:

The petition to review the above-identified application was dismissed because the reply, it is asserted, was not an amendment that *prima facie* places the application in condition for allowance.

It is respectfully suggested that the corrected reply that was submitted with the petition to revive on July 11th, 2006 was not either the reply that was considered in making a determination regarding the petition to revive and that a determination of the

completeness of the reply that was filed with the petition to revive
was improperly made because it raised new grounds that the applicant
was previously not made aware of and therefore could not have
possibly corrected.

This belief is based, in part, on the fact that certain of the reasons cited in the dismissal of the petition to revive are identical to those that were cited in a Notice of Non-Compliant Amendment that was mailed on April 3, 2006 with the exception of the comments appertaining to claim 21. Claim 21 is discussed hereinbelow. However, these defects had been corrected in the reply that was filed on July 11, 2006. The Notice of Non-Compliant Amendment was the Office's response to an "Amendment After Final" that was mailed on 12-23-2006. The defects in the Amendment After Final that was mailed on 12-23-2006 were corrected in the reply (i.e., a "Corrected Amendment After Final") that was submitted on July 11th, 2006 along with the petition to revive and therefore
cannot possibly be proper basis for the dismissal of the petition to
revive.

As relevant background information, a death in the immediate family on April 30, 2006 (a copy of the death certificate for Manuel Petrakis, father of my wife Stella Petrakis-Rinne, is enclosed) and the effects thereof resulted in a delay in the mailing of the response (i.e., the reply) to the Notice of Non-Compliant Amendment.

This delay occurred because I am a solo practitioner and because his death had significant impact on the surviving family. Consequently, the response to the notice of Non-Compliant Amendment was made at the first available opportunity; and was mailed on July 11, 2006.

This response included a "Corrected Amendment After Final", a one-page letter of transmittal, a petition for revival of an application for patent abandoned unintentionally, and the required fee of \$750.00.

Specifically, the continuation of 4(e) that was provided with the dismissal states, "Other: Claims 11-12, and 14, "(previously amended)" should be changed to --(previously presented)-- and claim 21, "(re-presented)" should be changed to -(previously presented)-- for clarification." These are believed to have been corrected in the corrected amendment after final that was mailed along with the petition to revive on July 11, 2006. Therefore, this cannot be proper basis for dismissal if they were in fact corrected by the reply that accompanied the petition. At the very least it provides confusion and makes a proper response at this time by the applicant impossible to accomplish.

An additional reason was also cited in the dismissal sent March 8, 2007 regarding claim 21 that asserted that applicant failed to show marked up changes for claim 21 when it changed from a method claim to an apparatus claim using underline, bracket, or

strikethrough. This is believed to also be an incorrect basis for the dismissal. This is because the Office Action that was mailed on April 30, 2006 (i.e., The Notice of Non-Compliant Amendment) failed to make mention that any changes to claim 21 were required or were a basis of non-compliance. Accordingly, the applicant would certainly well-believe that the only required changes necessary to bring the Amendment After Final into condition of allowance were those that were specified in the notice of non-compliant amendment; specifically the changes to the claim identifiers.

Accordingly, the reply that was submitted on July 11, 2006 along with the petition for revival can only rightly be evaluated for compliance based on the content of the notice of non-compliant amendment that was mailed on April 30, 2007. It is improper to add new grounds at this time and then penalize the applicant for not having foresight to somehow anticipate and correct them. The applicant had no notice whatsoever provided by the USPTO to include marked up changes for claim 21 or that such changes to claim 21 were required to bring the Amendment After Final into compliance. This request was not part of the original requirement to bring the amendment after final into compliance. Therefore, it could not possibly be included as part of the reply that was a bona fide effort to correct the defects that were cited in the Notice of Non-Compliant Amendment.

Upon the Examiner's later (subsequent) review and determination that further changes to claim 21 were required to the Amendment After Final, these changes should have been communicated to the applicant by way of a second Notice of Non-Compliant Amendment. In other words, it is respectfully suggested and requested that the petition for revival should have been allowed as proper and that a subsequent office action should be mailed to the applicant regarding the newly found grounds of non-compliance for claim 21. Otherwise, the applicant is being penalized for making a bona fide effort complying with all of the stated requirements of an Office Action (i.e., the notice of non-compliant amendment) and subsequent to his compliance, not being granted a resumption of the normal course of prosecution.

Please grant the petition to revive the application.

Respectfully submitted:



Risto A. Rinne, Jr.

Reg. No. 37,055

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2173 East Francisco Blvd. Suite E

San Rafael, CA 94901

Telephone 415 457-6933

COPY CITY AND COUNTY OF SAN FRANCISCO

CERTIFICATE OF DEATH

3200638002056

STATE FILE NUMBER 1. NAME OF DECEDENT - FIRST (Given) MANUEL		2. MIDDLE M.	3. LAST (Family) PETRAKIS	LOCAL REGISTRATION NUMBER	
4. ALSO KNOWN AS - <i>(Indicate first, middle, last)</i> ANAL ALSO KNOWN AS - <i>(Indicate first, middle, last)</i>		5. DATE OF BIRTH 10/18/1913		6. AGE Yrs. 92	7. DATE OF DEATH 04/30/2006
8. BIRTH STATE/FOREIGN COUNTRY Greece		9. SOCIAL SECURITY NUMBER 353-18-6408	10. EVER IN U.S. ARMED FORCES <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK	11. MARITAL STATUS Married	12. DECEASED'S RACE White
13. EDUCATION - <i>(Indicate level of education)</i> Bachelor's		14. DECEASED'S RESIDENCE (Street and number or location) Entomologist		15. OCCUPATION - <i>(Type of work for which dec'd. DO NOT USE RETIRED)</i> Public Health	
16. DECEASED'S RESIDENCE (Street and number or location) 2200 Sacramento Street, #1503		17. PLACE OF BURIAL OR BURIED (e.g., cemetery, road construction, clandestine agency, etc.) 2200 Sacramento Street, #1503, San Francisco, CA 94115		18. YEARS IN OCCUPATION 55	
19. CITY San Francisco		20. COUNTY/PROVINCE San Francisco	21. ZIP CODE 94115	22. YEAR IN COUNTY 39	23. STATE/FOREIGN COUNTRY California
24. INFORMANT'S NAME, RELATIONSHIP Carmencita Petrakis - Wife		25. INFORMANT'S MAILING ADDRESS (Name and number of residence, city or town, state, zip) 2200 Sacramento Street, #1503, San Francisco, CA 94115		26. LAST NAME (First)	
27. NAME OF SURVIVING SPOUSE - FIRST Carmencita		28. MIDDLE —	29. LAST (Family) Diaz	30. BIRTH STATE Greece	
31. NAME OF FATHER - FIRST Mark		32. MIDDLE —	33. LAST (Family) Petrakis	34. BIRTH STATE Greece	
35. NAME OF MOTHER - FIRST Stella		36. MIDDLE —	37. LAST (Family) Christoulakis	38. BIRTH STATE Greece	
39. DISPOSITION DATE (MM/YY/ZZ) 05/08/2006		40. PLACE OF FINAL DISPOSITION RES of Carmencita Petrakis, 2200 Sacramento Street, #1503, San Francisco, CA 94115		41. LICENCE NUMBER 6947	
42. TYPE OF DISPOSITION(S) CR/RES		43. SIGNATURE OF BUREAU <i>Susan Brownman</i>		44. DATE (MM/YY/ZZ) 05/03/2006	
45. NAME OF FUNERAL ESTABLISHMENT HALSTED N. GRAY - CAREW & ENGLISH		46. LICENCE NUMBER FD336	47. SIGNATURE OF LOCAL REGISTRAR <i>Mitchell Katz</i>		48. DATE (MM/YY/ZZ)
49. PLACE OF DEATH The Sequoia's		50. IF HOSPITAL, SPECIFY ONE <input type="checkbox"/> D <input type="checkbox"/> ERHO <input type="checkbox"/> DOA <input type="checkbox"/> Hospital <input checked="" type="checkbox"/> Nursing Home <input type="checkbox"/> Death		51. IF OTHER THAN HOSPITAL, SPECIFY ONE <input type="checkbox"/> D <input type="checkbox"/> ERHO <input type="checkbox"/> DOA <input type="checkbox"/> Hospital <input type="checkbox"/> Nursing Home <input type="checkbox"/> Death	
52. COUNTY San Francisco		53. FACILITY ADDRESS OR LOCATION WHERE BORN (Name and number if known)		54. CITY San Francisco	
55. CAUSE OF DEATH <i>(From the words - death, injury, or complication - that directly caused death. DO NOT state indirect or remote causes. If several causes, list them in order of importance, starting with the most important.)</i> Cardiopulmonary Arrest		56. TIME OF DEATH <i>(From the words - death, injury, or complication - that directly caused death. DO NOT state indirect or remote causes. If several causes, list them in order of importance, starting with the most important.)</i> Immediate		57. DEATH REPORTED TO POLICE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
58. DEATH CERTIFIED BY <i>(If death is by suicide, list the method used.)</i> Congestive Heart Failure		59. DEATH CERTIFIED BY <i>(If death is by suicide, list the method used.)</i> Years		60. AUTOPSY PERFORMED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
61. DEATH CERTIFIED BY <i>(If death is by suicide, list the method used.)</i> Ischemic Heart Disease		62. DEATH CERTIFIED BY <i>(If death is by suicide, list the method used.)</i> Years		63. DATE OF DEATH (MM/YY/ZZ) <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN	
64. OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN 55 Cerebrovascular Accident		65. WAS OPERATION PERFORMED FOR ANY CONDITION IN ITEM 64? (If yes, list type of operation and doc.) No		66. IF PRACTICALLY PERTINENT TO DEATH <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN	
67. PHOTOCOPIES CERTIFICATION <i>(Check one box)</i> ON		68. SIGNATURE AND TITLE OF CERTIFIER <i>Jean K. Haddad</i>		69. LICENCE NUMBER G7963	70. DATE (MM/YY/ZZ) 05/02/2006
71. MANNER OF DEATH <input type="checkbox"/> HOMICIDE <input type="checkbox"/> ACCIDENT <input type="checkbox"/> HOMICIDE <input type="checkbox"/> SUICIDE <input type="checkbox"/> Pending <input type="checkbox"/> Unascertained		72. PLACE OF INJURY <i>(e.g., home, construction site, accident scene, etc.)</i> Jean K. Haddad, MD, 909 Hyde Street, San Francisco, CA 94109		73. INJURY DATE (MM/YY/ZZ) 04/29/2006	74. HOUR (24 hours) 04/29/2006
75. DESCRIBE HOW INJURY OCCURRED <i>(e.g., hit by car, resulted in injury)</i>		76. LOCATION OF INJURY <i>(Street and number, or location, and day, and year)</i>		77. SIGNATURE OF CORONER / DEPUTY CORONER <i>J. Haddad</i>	
78. DATE OF INJURY 04/29/2006		79. DATE (MM/YY/ZZ) 04/29/2006	80. TYPE NAME, TITLE OF CORONER / DEPUTY CORONER J. Haddad		
81. STATE REGISTRAR A B C D E		82. FAX AUTH. # 0415-553-2222		83. CENSUS TRACT 0415-553-2222	

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HEALTH as of the date issued

DATE ISSUED

MAY 08 2006

* 002374944 *

Mitchell Katz
Mitchell Katz, M.D.
Health Officer and Local Registrar

This copy is not valid unless prepared on an engraved border, displaying the date, seal and signature of the City and County Health Officer.

